

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

In the specification has been amended on pages 1-4.

Claims 1-15 have been canceled.

New claims 16-28 have been added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 16-28 are now pending in this application.

New Claims

New claims 16-28 have been added. Applicant respectfully submits that claims 16-28 are not an independent or distinct invention from that of original claims 1-13.

The Office argues on pages 2-3 of the Office Action that claims 16-29, as previously submitted, were an independent or distinct invention from that of original claims 1-13 because they are related as combination and subcombination. As noted in the Office Action, such alleged inventions are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations. See MPEP § 806.05(c).

In regard to the first requirement of showing that the alleged combination did not require the particulars or features of the alleged subcombination because the alleged subcombination of claim 1 recited a positioning element that was a sheet-metal punch part, while previous claim 16 did not recite a positioning element.

Applicant notes that claim 16 of this response recites, among other things, a positioning element configured to position the lines relative to each other, wherein the positioning element has a first set of two slots configured to receive the lines and a second set of slots, wherein the positioning element is a sheet-metal punched part. Claim 16 has been altered to include the other particulars of original claim 1.

Applicant respectfully submits that new claims 16-28 and original claims do not present independent or distinct inventions. As discussed above, claim 16 includes the particulars of original claim 1 and therefore cannot be considered a combination that does not include the particulars of original claim 1, which the Office now considers a subcombination. In addition, Applicant respectfully submits that claims 16-28 and original claims 1-13 do not present independent or unrelated inventions because they overlap in scope.

In addition, although the Office now states that original claim 1 regards a subcombination, particularly just a positioning element, Applicant notes that the Office stated on page 4 of the Office Action dated March 23, 2009 in a rejection of claims 1-4 and 9-13 under 35 U.S.C. § 112, second paragraph, for indefiniteness that “[i]t is unclear as to whether the expansion valve, the two lines and the housing have been positively claimed as elements of the claimed fixing device within claim 1, or whether the expansion valve, the two lines and the housing have only been recited as intended use” (emphasis added). The Office then stated that for purposes of examination that the Office assumed the latter position. However, this statement in the indefiniteness rejection clearly shows that the Office thought it was unclear whether the scope of original claim 1 regarded a combination, which included a housing, or whether the scope of original claim 1 regarded a subcombination, as the Office now argues in the current Office Action. Therefore, the Office’s current position that claim 1 clearly regards subcombination is contrary to its previous position in the Office Action dated March 23, 2009.

Applicant notes that claims 20-23 are similar to claims 5-8, which were previously withdrawn from consideration. Applicant respectfully requests examination of at least claims 16-19 and 24-28. Where appropriate, comments regarding the objections and rejections set forth in the Office Action of March 23, 2009 are set forth below in regard to claims 16-28.

Objections to the Specification

The specification is objected to for containing informalities. Applicant respectfully submits that the amendments to the specification render these objections moot. Reconsideration and withdrawal of these objections is respectfully requested.

Claim Objections

Claims 3, 4, and 10 are objected to for containing informalities. Claims 3, 4, and 10 have been canceled. In addition, Applicant respectfully submits that claims 16-28 address these objections. Reconsideration and withdrawal of these objections is respectfully requested.

Rejections under 35 U.S.C. § 112

Claims 1-4 and 9-13 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Claims 1-4 and 9-13 have been canceled. In addition, Applicant respectfully submits that claims 16-28 address these rejections. Reconsideration and withdrawal of these rejections is respectfully requested.

Rejection under 35 U.S.C. § 102

Claims 1-4 and 9-13 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 3,869,153 to De Vincent *et al.* (hereafter “De Vincent”). This rejection is respectfully traversed. Although claims 1-4 and 9-13 have been canceled, comments are provided below in regard to new claims 16-28.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

De Vincent discloses an assembly for mounting tubes 16 to a housing 10 of a compressor or similar accessory. See De Vincent at col. 2, lines 31-49. The tubes 16 are provided with yokes 22 that are secured to the tubes 16. See De Vincent at col. 2, lines 59-

68; col. 3, lines 1-11, 48-65. The yokes 22 are in turn secured to a mounting plate 24. See De Vincent at col. 2, lines 63-68; col. 3, lines 1-11, 25-41; and col. 4, lines 8-25.

However, the housing 10 of De Vincent does not include projections arranged and shaped in accordance with a second set of slots of a positioning element such that the positioning element can be positioned on the housing in a rotationally secure manner, as recited in claim 16. Claims 17-28 depend from claim 16. De Vincent is silent in regard to the housing 10 having such projections and the drawings of De Vincent depict the housing 10 as having a flat surface with holes 14 for the tubes 16. Therefore, De Vincent does not disclose all of the features of claim 16.

For at least the reasons discussed above, De Vincent does not anticipate claims 16-28 because De Vincent does not disclose all of the features of claim 16.

Reconsideration and withdrawal of this rejection is respectfully requested.

Conclusion

Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741.

Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for

such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date February 12, 2010

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 945-6162
Facsimile: (202) 672-5399

By Thomas J. Blaha Reg. No.
43,438

for Pavan K. Agarwal
Attorney for Applicant
Registration No. 40,888

Kevin L. McHenry
Attorney for Applicant
Registration No. 62,582